

AMENDED IN ASSEMBLY APRIL 21, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1031

Introduced by Assembly Member Correa

February 20, 2003

~~An act to amend Section 17642 of the Financial Code, relating to~~ *An act to amend Sections 25212, 25230, 25232, 25241, 25247, 25540, 25541, and 25612.5 of, and to add Sections 25256 and 25612.3 to, the Corporations Code, and to amend Sections 12221, 17209.3, 22109, and 23001 of, and to add Sections 12307.5, 17424, and 22705.1 to, the Financial Code, relating to financial institutions.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1031, as amended, Correa. ~~Escrow agents—Financial institutions.~~

(1) Existing law, the Corporate Securities Law of 1968, provides for the licensing of agents and broker-dealers and the registration of investment advisers and investment adviser representatives by the Department of Corporations, subject to certain exceptions. Existing law authorizes the Commissioner of Corporations to take disciplinary action against the certificate of a broker-dealer or an investment adviser for specified acts, including a willful violation of certain provisions relating to securities, investment, commodities, and franchises.

This bill would authorize disciplinary action against the certificate of a broker-dealer or investment adviser for the violation of other statutes and rules related to broker-dealers and investment advisers, or similar state or foreign regulatory provisions. The bill would also

authorize the commissioner to review the disciplinary history of an investment adviser representative upon the filing of a notice of employment, association, or transfer, an amendment of that notice, or a termination of employment or association.

Existing law requires that, upon the request of the commissioner, a broker-dealer or investment adviser furnish an authorization for disclosure of financial records of the business.

This bill would require a broker-dealer or investment adviser, and an applicant for licensure as a broker-dealer or investment adviser, to provide the authorization for disclosure.

Existing law requires the commissioner to make certain information concerning investment advisers in the possession of the commissioner available to the public on request.

This bill would limit this information to information subject to disclosure under the California Public Records Act or the information Practices Act of 1977, and would exempt specified criminal history record information.

The bill would make a disciplinary action taken by the State of California, another state, the federal government, or another country for an action substantially related to broker-dealer or investment advisers grounds for disciplinary action by the commissioner. The bill would provide that a certified copy of the record of discipline is conclusive evidence of the events in the record.

(2) Existing law authorizes certain fines and penalties relative to willful violations of the Corporate Securities Act of 1968.

This bill would increase those fines and penalties for issuers of securities who violate certain provisions of that law.

This bill would require the commissioner to use specified forms in regulating broker-dealers and investment advisers.

Existing law authorizes the commissioner to cooperate with other securities agencies, and to take specified acts for this purpose.

This bill would also authorize the department to cooperate in any regulatory activity necessary in the administration of the USA PATRIOT Act of 2001.

Existing law requires certain securities offered or sold in this state to be qualified or exempted, and provides that an application for qualification, an amendment to an application, or a related securities document or record filed in this state by means of an electronic technology is deemed to be a valid original document upon reproduction to paper form by the Department of Corporations.



This bill would expand this provision to apply to other documents and records.

(3) Existing law, the Check Seller, Bill Payer, and Proraters Law, the violation of which is a misdemeanor, prohibits a person from engaging in the business of check selling, bill paying, or prorating without being licensed by the Commissioner of Financial Institutions.

Existing law authorizes the commissioner to deny a license under certain conditions, including if the applicant or any officer, director, or member of the applicant has violated a provision of the law or rules thereunder, or similar regulatory scheme of a foreign jurisdiction.

This bill would make a violation by a general partner or person owning or controlling, directly or indirectly, 10% or more of the outstanding interests or equity securities subject to the denial of licensure. The bill would also include a violation of a related regulatory scheme of California as a ground for denial of a license.

This bill would make a disciplinary action taken by the State of California, another state, the federal government, or another country for an action substantially related to check raters and prorators, grounds for a disciplinary action by the commissioner. The bill would provide that a certified copy of the record of discipline is conclusive evidence of the events therein.

(4) Existing law, the Escrow Law, prohibits a person from engaging in business as an escrow agent except as a corporation licensed by the Commissioner of Financial Institutions as an escrow agent. Existing law authorizes the commissioner to deny a license under certain conditions.

This bill would make a violation of the Escrow Law, related rules, or a similar regulatory scheme of a foreign jurisdiction by a general partner or person owning or controlling, directly or indirectly, 10% or more of the outstanding interests or equity securities subject to the denial of licensure. The bill would also make a violation of a related regulatory scheme of California as a ground for denial of a license.

This bill would make a disciplinary action taken by the State of California, another state, the federal government, or another country for an action substantially related to escrow agents, grounds for a disciplinary action by the commissioner. The bill would provide that a certified copy of the record of discipline is conclusive evidence of the events therein.

(5) Existing law, the Finance Lenders Law, prohibits a person from engaging in the business of a finance lender or broker without a license

from the Commissioner of Financial Institutions. Existing law provides that the commissioner may deny an application for a license specified reasons, including that the applicant or any officer, director, general partner, or person owning or controlling, directly or indirectly, 10% or more of the outstanding interests or equity securities of the applicant has violated that law, related rules and regulations, or the similar regulatory scheme of a foreign jurisdiction.

This bill would include a violation of a similar regulatory scheme of the state of California as a ground for denial of a license. The bill would make a disciplinary action taken by the State of California, another state, the federal government, or another country for an action substantially related to the practice of finance lenders or brokers, grounds for a disciplinary action by the commissioner. The bill would provide that a certified copy of the record of discipline is conclusive evidence of the events therein.

(6) Existing law, the California Deferred Deposit Transaction Law, which except for specified provisions becomes operative March 1, 2004, authorizes regulation of persons engaged in the business of making or negotiating deferred deposit transactions and provides for the licensing of those persons by the Commissioner of Corporations. Existing law exempts certain financial entities from the definition of a licensee.

This bill would also exempt credit unions from the definition of a licensee.

(7) Because this bill would create new crimes, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law requires the Commissioner of Corporations to perform certain acts when he or she determines to liquidate the license of a licensed escrow agent, including, among other things, an inventory of all the assets of the licensed escrow agent to be made in duplicate.~~

~~This bill would make nonsubstantive changes to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~—yes. State-mandated local program: ~~no~~ yes.



The people of the State of California do enact as follows:

~~SECTION 1.—Section 17642 of the Financial Code is amended~~

SECTION 1. *Section 25212 of the Corporations Code is amended to read:*

25212. The commissioner may, after appropriate notice and opportunity for hearing, by order censure, deny a certificate to, suspend for a period not exceeding 12 months or revoke the certificate of, any broker-dealer if the commissioner finds that the censure, denial, suspension, or revocation is in the public interest and that the broker-dealer, whether prior or subsequent to becoming a broker-dealer, or any partner, officer, director, or branch manager of the broker-dealer, whether prior or subsequent to becoming associated with the broker-dealer, or any person directly or indirectly controlling the broker-dealer, whether prior or subsequent to becoming such, or any agent employed by the broker-dealer while so employed has done any of the following:

(a) Has willfully made or caused to be made in any application for a certificate or in any report required to be filed with the commissioner under this law, or in any proceeding before the commissioner, any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has willfully omitted to state in the application or report any material fact which is required to be stated therein.

(b) Has been either (1) convicted of or has pled nolo contendere to a felony or misdemeanor, or (2) held liable in a civil action by final judgment of a court based upon conduct showing moral turpitude, and the commissioner finds that the felony, misdemeanor, or civil action (A) involved the purchase or sale of any security, (B) arose out of the conduct of the business of a broker-dealer or investment adviser, (C) involved theft, or (D) involved the violation of Section 1341, 1342 or 1343 of Title 18 of the United States Code.

(c) Is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, or broker-dealer, or as an affiliated person or employee of any investment company, bank, or insurance company, or from engaging in or continuing any

1 conduct or practice in connection with that activity or in
2 connection with the purchase or sale of any security.

3 (d) Is or has been subject to (1) any order of the Securities and
4 Exchange Commission or the securities administrator of any other
5 state denying registration to, or revoking or suspending the
6 registration of, the person as a broker, dealer, agent, or investment
7 adviser, (2) any order of any national securities association or
8 national securities exchange (registered under the Securities
9 Exchange Act of 1934) suspending or expelling that person from
10 membership in the association or exchange or from association
11 with any member thereof, or (3) any other order of the commission
12 or any administrator, association, or exchange referred to in this
13 subdivision which is or has been necessary for the protection of
14 any investor.

15 (e) Has willfully violated any provision of the Securities Act of
16 1933, the Securities Exchange Act of 1934, the Investment
17 Advisers Act of 1940, the Investment Company Act of 1940, the
18 Commodity Exchange Act, or Title 4 (commencing with Section
19 25000), including the Franchise Investment Law, Division 5
20 (commencing with Section 31000), or the California Commodity
21 Law of 1990, Division 4.5 (commencing with Section 29500), or
22 of any rule or regulation under any of those statutes, or any order
23 of the commissioner which is or has been necessary for the
24 protection of any investor.

25 (f) Is or has been subject to (1) any order of the Commodity
26 Futures Trading Commission denying registration to, or revoking
27 or suspending the registration of, that person under the
28 Commodity Exchange Act, (2) any order of any board of trade or
29 commodity exchange, including, but not limited to, the New York
30 Mercantile Exchange, the Chicago Mercantile Exchange, the
31 Chicago Board of Trade, or the Chicago Board Options Exchange,
32 suspending or expelling that person from membership in the board
33 of trade or commodity exchange or from association with any
34 member thereof, or (3) any other order of the commission or any
35 board or exchange referred to in this subdivision which is or has
36 been necessary for the protection of any investor.

37 (g) Has willfully aided, abetted, counseled, commanded,
38 induced, or procured the violation by any other person of any of
39 the statutes or rules or regulations referred to in subdivision (e)
40 above, or has failed reasonably to supervise, with a view to

1 preventing violations of those statutes, rules and regulations,
2 another person who commits a violation, if the other person is
3 subject to his or her supervision; for the purposes of this
4 subdivision, no person shall be deemed to have failed reasonably
5 to supervise any person if (1) there have been established
6 procedures, and a system for applying those procedures, which
7 would reasonably be expected to prevent and detect, insofar as
8 practicable, any violation by the other person, and (2) that person
9 has reasonably discharged the duties and obligations incumbent
10 upon him or her by reason of those procedures and system without
11 reasonable cause to believe that those procedures and system were
12 not being complied with.

13 (h) Is subject to any currently effective order of the
14 commissioner entered pursuant to Section 25213 revoking or
15 suspending the certificate of the person as an agent.

16 (i) *Has violated any provision of this division or the rules*
17 *thereunder or any similar regulatory scheme of the State of*
18 *California or a foreign jurisdiction.*

19 SEC. 2. Section 25230 of the Corporations Code is amended
20 to read:

21 25230. (a) It is unlawful for any investment adviser to
22 conduct business as an investment adviser in this state unless the
23 investment adviser has first applied for and secured from the
24 commissioner a certificate, then in effect, authorizing the
25 investment adviser to do so or unless the investment adviser is
26 exempted by the provisions of Chapter 1 (commencing with
27 Section 25200) of this part or unless the investment adviser is
28 subject to Section 25230.1.

29 (b) No person, on behalf of an investment adviser that has
30 obtained a certificate pursuant to Section 25231, may, in this state:
31 offer or negotiate for the sale of investment advisory services of
32 the investment adviser; determine which recommendations shall
33 be made to, make recommendations to, or manage the accounts of,
34 clients of the investment adviser; or determine the reports or
35 analyses concerning securities to be published by the investment
36 adviser, unless the investment adviser and that person have
37 complied with rules that the commissioner may adopt for the
38 qualification and employment of those persons.

1 (c) *The commissioner may, consistent with Section 25232.1,*
2 *review the disciplinary history of an investment adviser*
3 *representative upon the filing of notice of any of the following:*

4 (1) *The employment, association, or transfer of the investment*
5 *adviser representative.*

6 (2) *An amendment to the information filed by the investment*
7 *adviser representative at the time of employment, association, or*
8 *transfer.*

9 (3) *The termination of employment or association of the*
10 *investment adviser representative.*

11 SEC. 3. *Section 25232 of the Corporations Code is amended*
12 *to read:*

13 25232. The commissioner may, after appropriate notice and
14 opportunity for hearing, by order censure, deny a certificate to, or
15 suspend for a period not exceeding 12 months or revoke the
16 certificate of, an investment adviser, if the commissioner finds that
17 the censure, denial, suspension, or revocation is in the public
18 interest and that the investment adviser, whether prior or
19 subsequent to becoming such, or any partner, officer or director
20 thereof or any person performing similar functions or any person
21 directly or indirectly controlling the investment adviser, whether
22 prior or subsequent to becoming such, or any employee of the
23 investment adviser while so employed:

24 (a) Has willfully made or caused to be made in any application
25 for a certificate or any report filed with the commissioner under
26 this division, or in any proceeding before the commissioner, any
27 statement which was at the time and in the light of the
28 circumstances under which it was made false or misleading with
29 respect to any material fact, or has willfully omitted to state in the
30 application or report any material fact which is required to be
31 stated therein; or

32 (b) Has been either (1) convicted of or has pled nolo contendere
33 to any felony or misdemeanor, or (2) held liable in a civil action
34 by final judgment of a court based upon conduct showing moral
35 turpitude, and the commissioner finds that the felony,
36 misdemeanor or civil action (i) involved the purchase or sale of
37 any security, (ii) arose out of the conduct of the business of a
38 broker-dealer or investment adviser, (iii) involved theft, or (iv)
39 involved the violation of Section 1341, 1342 or 1343 of Title 18
40 of the United States Code; or

1 (c) Is permanently or temporarily enjoined by order, judgment,
2 or decree of any court of competent jurisdiction from acting as an
3 investment adviser, underwriter or broker-dealer or as an affiliated
4 person or employee of any investment company, bank, or
5 insurance company, or from engaging in or continuing any
6 conduct or practice in connection with that activity, or in
7 connection with the purchase or sale of any security; or

8 (d) Is or has been subject to (1) any order of the Securities and
9 Exchange Commission or the securities administrator of any other
10 state denying or revoking or suspending his or her registration as
11 an investment adviser, or investment adviser representative, or as
12 a broker or dealer or agent, (2) any order of any national securities
13 association or national securities exchange (registered under the
14 Securities Exchange Act of 1934) suspending or expelling him or
15 her from membership in that association or exchange or from
16 association with any member thereof, or (3) any other order of the
17 commission or any administrator, association, or exchange
18 referred to in this subdivision which is or has been necessary for
19 the protection of any investor; or

20 (e) Has willfully violated any provision of the Securities Act of
21 1933, the Securities Exchange Act of 1934, the Investment
22 Advisers Act of 1940, the Investment Company Act of 1940, the
23 Commodity Exchange Act, or Title 4 (commencing with Section
24 25000), including the Franchise Investment Law, Division 5
25 (commencing with Section 31000), or the California Commodity
26 Law of 1990, Division 4.5 (commencing with Section 29500), or
27 of any rule or regulation under any of those statutes, or any order
28 of the commissioner which is or has been necessary for the
29 protection of any investor; or

30 (f) Is or has been subject to (1) any order of the Commodity
31 Futures Trading Commission denying registration to, or revoking
32 or suspending the registration of, that person under the
33 Commodity Exchange Act, (2) any order of any board of trade or
34 commodity exchange, including, but not limited to, the New York
35 Mercantile Exchange, the Chicago Mercantile Exchange, the
36 Chicago Board of Trade, or the Chicago Board Options Exchange,
37 suspending or expelling that person from membership in the board
38 of trade or commodity exchange or from association with any
39 member thereof, or (3) any other order of the commission or any

1 board or exchange referred to in this subdivision which is or has
2 been necessary for the protection of any investor; or

3 (g) Has aided, abetted, counseled, commanded, induced, or
4 procured the violation by any other person of any statute or rule or
5 regulation referred to in subdivision (e).

6 (h) *Has violated any provision of this division or the rules*
7 *thereunder or any similar regulatory scheme of the State of*
8 *California or a foreign jurisdiction.*

9 SEC. 4. *Section 25241 of the Corporations Code is amended*
10 *to read:*

11 25241. (a) Every broker-dealer and every investment adviser
12 licensed under Section 25230 shall make and keep such accounts,
13 correspondence, memoranda, papers, books, and other records
14 and shall file such financial and other reports as the commissioner
15 by rule requires, subject to the limitations of Section 15(h) of the
16 Securities Exchange Act of 1934 with respect to broker-dealers
17 and Section 222 of the Investment Advisers Act of 1940 with
18 respect to investment advisers. ~~At~~

19 (b) All records so required shall be preserved for the time
20 specified in the rule. ~~At~~

21 (c) All records referred to in this section are subject at any time
22 and from time to time to ~~such~~ reasonable periodic, special, or other
23 examinations by the commissioner, within or without this state, as
24 the commissioner deems necessary or appropriate in the public
25 interest or for the protection of investors. ~~For~~

26 (d) *For* the purpose of avoiding unnecessary duplications of
27 examinations, the commissioner, insofar as he or she deems it
28 practicable in administering this section, may cooperate with the
29 securities administrators of other states, the Securities and
30 Exchange Commission and any national securities exchange or
31 national securities association.

32 ~~Upon request of the commissioner~~

33 (e) *Unless otherwise provided by rule, every broker-dealer or,*
34 *every investment adviser licensed under Section 25230, and every*
35 *applicant for a license under Section 25210 or 25230 shall furnish*
36 *an authorization for disclosure to the commissioner of financial*
37 *records of the licensee's broker-dealer or investment adviser*
38 *business pursuant to Section 7473 of the Government Code.*

39 SEC. 5. *Section 25247 of the Corporations Code is amended*
40 *to read:*

1 25247. (a) Upon written or oral request, the commissioner
 2 shall make available to any person the information specified in
 3 Section 6254.12 of the Government Code with respect to any
 4 broker-dealer or agent licensed or regulated under this part. The
 5 commissioner shall also make available the current license status
 6 and the year of issuance of the license of a broker-dealer. Any
 7 information disclosed pursuant to this subdivision shall constitute
 8 a public record. Notwithstanding any other provisions of law, the
 9 commissioner may disclose either orally or in writing that
 10 information pursuant to this subdivision. There shall be no liability
 11 on the part of and no cause of action of any nature shall arise
 12 against the State of California, the Department of Corporations,
 13 the Commissioner of Corporations, or any officer, agent, or
 14 employee of the state or of the Department of Corporations for the
 15 release of any false or unauthorized information, unless the release
 16 of that information was done with knowledge and malice.

17 (b) Any broker-dealer or agent licensed or regulated under this
 18 part shall upon request deliver a written notice to any client when
 19 a new account is opened stating that information about the
 20 licensure status or disciplinary record of a broker-dealer or an
 21 agent may be obtained from the Department of Corporations, or
 22 from any other source that provides substantially similar
 23 information.

24 (c) The notice provided under subdivision (b) shall contain the
 25 office location or telephone number where the information may be
 26 obtained.

27 (d) A broker-dealer or agent shall be exempt from providing
 28 the notice required under subdivision (b) if a person who does not
 29 have a financial relationship with the broker-dealer or agent,
 30 requests only general operational information such as the nature
 31 of the broker-dealer's or agent's business, office location, hours of
 32 operation, basic services, and fees, but does not solicit advice
 33 regarding investments or other services offered.

34 (e) Upon written or oral request, the commissioner shall make
 35 available to any person the information filed with the Investment
 36 Adviser Registration Depository with respect to any investment
 37 adviser, investment adviser representative, or associated person of
 38 an investment adviser licensed or regulated under this part. The
 39 commissioner shall also make available the current license status
 40 and the year of issuance of the license of an investment adviser.

1 Any information disclosed pursuant to this subdivision shall
2 constitute a public record. Notwithstanding any other provision of
3 law, the commissioner may disclose that information either orally
4 or in writing pursuant to this subdivision. There shall be no
5 liability on the part of and no cause of action of any nature shall
6 arise against the State of California, the Department of
7 Corporations, the Commissioner of Corporations, or any officer,
8 agent, or employee of the state or of the Department of
9 Corporations for the release of any false or unauthorized
10 information, unless the release of that information was done with
11 knowledge and malice.

12 (f) Section 461 of the Business and Professions Code shall not
13 be applicable to the Department of Corporations when using a
14 national, uniform application adopted or approved for use by the
15 Securities and Exchange Commission, the North American
16 Securities Administrators Association, or the National
17 Association of Securities Dealers Regulation, Inc. that is required
18 for participation in the Central Registration Depository or the
19 Investment Adviser Registration Depository.

20 (g) *This section shall not require the disclosure of criminal*
21 *history record information maintained by the Federal Bureau of*
22 *Investigation pursuant to Section 534 of Title 28 of the United*
23 *States Code, and the rules thereunder, or information not*
24 *otherwise subject to disclosure under the California Public*
25 *Records Act or the Information Practices Act of 1977.*

26 SEC. 6. *Section 25256 is added to the Corporations Code, to*
27 *read:*

28 25256. (a) *For any broker-dealer or investment adviser, a*
29 *disciplinary action taken by the State of California, another state,*
30 *an agency of the federal government, or another country for an*
31 *action substantially related to the activity regulated under this*
32 *division may be grounds for disciplinary action by the*
33 *commissioner. A certified copy of the record of the disciplinary*
34 *action taken against the licensee by the State of California, other*
35 *state, agency of the federal government, or other country shall be*
36 *conclusive evidence of the events related therein.*

37 (b) *Nothing in this section precludes the commissioner from*
38 *applying a specific statutory provision in this division providing*
39 *for discipline against a broker-dealer or investment adviser, as a*
40 *result of disciplinary action taken against a broker-dealer or an*



1 *investment adviser, by the State of California, another state, an*
2 *agency of the federal government, or another country.*

3 *SEC. 7. Section 25540 of the Corporations Code is amended*
4 *to read:*

5 25540. (a) Except as provided for in subdivision (b), any
6 person who willfully violates any provision of this division, or
7 who willfully violates any rule or order under this division, shall
8 upon conviction be fined not more than one million dollars
9 (\$1,000,000), or imprisoned in the state prison, or in a county jail
10 for not more than one year, or be punished by both such fine and
11 imprisonment; but no person may be imprisoned for the violation
12 of any rule or order if he or she proves that he or she had no
13 knowledge of the rule or order.

14 (b) Any person who willfully violates Section 25400, 25401,
15 or 25402, or who willfully violates any rule or order under this
16 division adopted pursuant to those provisions, shall upon
17 conviction be fined not more than ten million dollars
18 (\$10,000,000), or imprisoned in the state prison for two, three, or
19 five years, or be punished by both—~~such~~ *that* fine and
20 imprisonment.

21 (c) Any issuer, as defined in Section 2 of the Sarbanes-Oxley Act
22 of 2002 (Public Law 107-204), who willfully violates Section
23 25400, 25401, or 25402, or who willfully violates any rule or order
24 under this division adopted pursuant to those provisions, shall
25 upon conviction be fined not more than twenty-five million dollars
26 (\$25,000,000).

27 *SEC. 8. Section 25541 of the Corporations Code is amended*
28 *to read:*

29 25541. (a) Any person who willfully employs, directly or
30 indirectly, any device, scheme, or artifice to defraud in connection
31 with the offer, purchase, or sale of any security or willfully
32 engages, directly or indirectly, in any act, practice, or course of
33 business which operates or would operate as a fraud or deceit upon
34 any person in connection with the offer, purchase, or sale of any
35 security shall upon conviction be fined not more than ten million
36 dollars (\$10,000,000), or imprisoned in the state prison for two,
37 three, or five years, or be punished by both—~~such~~ *that* fine and
38 imprisonment.

39 (b) Any issuer, as defined in Section 2 of the Sarbanes-Oxley
40 Act of 2002 (Public Law 107-204), who willfully violates

1 subdivision (a) shall upon conviction be fined not more than
2 twenty-five million dollars (\$25,000,000).

3 SEC. 9. Section 25612.3 is added to the Corporations Code,
4 to read:

5 25612.3. Unless otherwise provided by rule, the
6 commissioner shall require the use of the following forms:

7 (a) Form BD (Uniform Application for Broker-Dealer
8 Registration) for a broker-dealer application.

9 (b) Form ADV (Uniform Application for Investment Adviser
10 Registration) for an investment adviser application.

11 (c) Form BDW (Uniform Request for Broker-Dealer
12 Withdrawal) for withdrawing from licensure as a broker-dealer.

13 (d) Form ADV-W (Notice of Withdrawal from Registration as
14 Investment Adviser) for withdrawing from licensure as an
15 investment adviser.

16 (e) Form U-4 (Uniform Application for Securities Industry
17 Registration or Transfer) for the reporting of an agent of a
18 broker-dealer or an investment adviser representative or
19 associated person of an investment adviser.

20 (f) Form U-5 (Uniform Termination Notice for Securities
21 Industry Registration) for the reporting of the termination of an
22 agent of a broker-dealer or an investment adviser representative
23 or associated person of an investment adviser.

24 SEC. 10. Section 25612.5 of the Corporations Code is
25 amended to read:

26 25612.5. (a) To encourage uniform interpretation and
27 administration of this law and effective securities regulation and
28 enforcement, the commissioner may cooperate with the securities
29 agencies or administrators of one or more states, Canadian
30 provinces or territories, or other countries, the Securities and
31 Exchange Commission, the Commodity Futures Trading
32 Commission, the Securities Investor Protection Corporation, any
33 self-regulatory organization, any national or international
34 organization or securities officials or agencies, and any
35 governmental law enforcement or regulatory agency.

36 (b) The cooperation authorized by subdivision (a) includes, but
37 is not limited to, the following actions:

38 (1) Prescribing rules and forms with a view to achieving
39 maximum uniformity in the form and content of registration
40 statements, applications, and reports wherever practicable.

1 (2) Participating in a nationwide central depository for
2 qualification or registration of securities under this law and for
3 documents or records required or allowed to be maintained under
4 this law.

5 (3) Participating in the Central Registration Depository, or any
6 successor or alternative nationwide or regional depository, for the
7 registering, certifying, or licensing of broker-dealers or agents, or
8 both.

9 (4) Participating in the Investment Adviser Registration
10 Depository, or any successor or alternative nationwide or regional
11 depository, for the registering, certifying, or licensing of
12 investment advisers or investment adviser representatives, or both.

13 (5) *Cooperating in any regulatory activity necessary in the*
14 *administration of the Uniting and Strengthening America by*
15 *Providing Appropriate Tools Required to Intercept and Obstruct*
16 *Terrorism Act of 2001 (Public Law 107-56; USA Patriot Act).*

17 (c) Notwithstanding any other provision of law, any
18 application for qualification, amendment to the application or
19 related securities qualification or registration document or notice
20 under Sections 25100.1, 25101.1, 25102, 25102.1, 25110, 25120,
21 25130, and 25230.1 or record otherwise required to be signed that
22 is filed in this state ~~by means of electronic technology~~ *as an*
23 *electronic record* pursuant to a nationwide central depository for
24 qualification or registration of securities, *or any electronic record*
25 *filed through the Central Registration Depository or the*
26 *Investment Adviser Registration Depository*, shall be deemed to be
27 a valid original document upon reproduction to paper form by the
28 Department of Corporations.

29 (d) ~~“Electronic technology” includes, but is not limited to,~~
30 ~~computer modem, magnetic media or optical disk, but does not~~
31 ~~include a digital signature that does not meet the requirements of~~
32 ~~California law. For purposes of this section, “electronic record”~~
33 ~~has the same meaning as in subdivision (g) of Section 1633.2 of the~~
34 ~~Civil Code.~~

35 SEC. 11. Section 12221 of the Financial Code is amended to
36 read:

37 12221. Upon reasonable notice and opportunity to be heard,
38 the commissioner may deny the application for the license for any
39 of the following reasons:

1 (a) A false statement of a material fact has been made in the
2 application for license.

3 (b) Any officer, director, or member of the applicant has,
4 within the last 10 years, been (1) convicted of or pleaded nolo
5 contendere to a crime, or (2) committed any act involving
6 dishonesty, fraud, or deceit, which crime or act is substantially
7 related to the qualifications, functions, or duties of a person
8 engaged in business in accordance with the provisions of this
9 division.

10 (c) The applicant ~~or~~, any officer, director, *general partner*, or
11 member of the applicant, *or any person owning or controlling,*
12 *directly or indirectly, 10 percent or more of the outstanding*
13 *interests or equity securities of the applicant* has violated any
14 provision of this division or the rules thereunder or any similar
15 regulatory scheme of *the State of California* or a foreign
16 jurisdiction.

17 (d) The applicant has not complied with all the applicable
18 provisions of this division.

19 (e) The proposed officers and directors do not have sufficient
20 check selling, bill paying, prorating, or other experience to afford
21 reasonable promise of successful operation.

22 (f) The plan of business does not demonstrate that the proposed
23 business will have a reasonable chance for a successful operation.

24 (g) The proposed business is being formed for a purpose other
25 than the legitimate objectives contemplated by this division.

26 (h) The proposed capital structure is inadequate.

27 SEC. 12. *Section 12307.5 is added to the Financial Code, to*
28 *read:*

29 12307.5. (a) *For any licensee, a disciplinary action taken by*
30 *the State of California, another state, an agency of the federal*
31 *government, or another country for an action substantially related*
32 *to the activity regulated under this division may be grounds for*
33 *disciplinary action by the commissioner. A certified copy of the*
34 *record of the disciplinary action taken against the licensee by the*
35 *State of California, other state, agency of the federal government,*
36 *or other country shall be conclusive evidence of the events related*
37 *therein.*

38 (b) *Nothing in this section shall preclude the commissioner*
39 *from applying a specific statutory provision in this division*
40 *providing for discipline against a licensee as a result of*

1 *disciplinary action taken against a licensee by the State of*
2 *California, another state, an agency of the federal government, or*
3 *another country.*

4 *SEC. 13. Section 17209.3 of the Financial Code is amended*
5 *to read:*

6 17209.3. The commissioner may refuse to issue any license
7 being applied for, and shall refuse to issue any license being
8 applied for if upon his examination and investigation, and after
9 appropriate hearing, he finds any of the following:

10 (a) That the corporation is to be formed for any business other
11 than legitimate escrow agent services, or proposes to use a name
12 that is misleading or in conflict with the name of an existing
13 licensee.

14 (b) That any incorporator, officer, or director of the applicant
15 has, within the last 10 years, been (1) convicted of or pleaded nolo
16 contendere to a crime, or (2) committed any act involving
17 dishonesty, fraud, or deceit, which crime or act is substantially
18 related to the qualifications, functions, or duties of a person
19 engaged in business in accordance with the provisions of this
20 division.

21 (c) That there is no officer or manager possessing a minimum
22 of five years of responsible escrow or joint control experience
23 stationed or to be stationed at the main office of the corporation and
24 that there is no officer, manager or employee possessing a
25 minimum of four years of responsible escrow or joint control
26 experience stationed or to be stationed at each branch.

27 (d) That the proposed licensee's financial program is unsound.

28 (e) A false statement of a material fact has been made in the
29 application for license.

30 (f) The applicant~~or~~, any officer, director, *general partner*, or
31 incorporator of the applicant, *or any person owning or controlling,*
32 *directly or indirectly, 10 percent or more of the outstanding equity*
33 *securities of the applicant* has violated any provision of this
34 division or the rules thereunder or any similar regulatory scheme
35 of *the State of California or a foreign jurisdiction.*

36 *SEC. 14. Section 17424 is added to the Financial Code, to*
37 *read:*

38 17424. (a) *For any licensee, a disciplinary action taken by*
39 *the State of California, another state, an agency of the federal*
40 *government, or another country for an action substantially related*

1 *to the activity regulated under this division may be grounds for*
2 *disciplinary action by the commissioner. A certified copy of the*
3 *record of the disciplinary action taken against the licensee by the*
4 *State of California, other state, agency of the federal government,*
5 *or other country shall be conclusive evidence of the events related*
6 *therein.*

7 *(b) Nothing in this section shall preclude the commissioner*
8 *from applying a specific statutory provision in this division*
9 *providing for discipline against a licensee as a result of*
10 *disciplinary action taken against a licensee by the State of*
11 *California, another state, an agency of the federal government, or*
12 *another country.*

13 *SEC. 15. Section 22109 of the Financial Code is amended to*
14 *read:*

15 22109. (a) Upon reasonable notice and opportunity to be
16 heard, the commissioner may deny the application for any of the
17 following reasons:

18 (1) A false statement of a material fact has been made in the
19 application.

20 (2) Any officer, director, general partner, or person owning or
21 controlling, directly or indirectly, 10 percent or more of the
22 outstanding interests or equity securities of the applicant has,
23 within the last 10 years (A) been convicted of or pleaded nolo
24 contendere to a crime, or (B) committed any act involving
25 dishonesty, fraud, or deceit, if the crime or act is substantially
26 related to the qualifications, functions, or duties of a person
27 engaged in business in accordance with this division.

28 (3) The applicant or any officer, director, general partner, or
29 person owning or controlling, directly or indirectly, 10 percent or
30 more of the outstanding interests or equity securities of the
31 applicant has violated any provision of this division or the rules
32 thereunder or any similar regulatory scheme of *the State of*
33 *California* or a foreign jurisdiction.

34 (b) The application shall be considered withdrawn within the
35 meaning of this section if the applicant fails to respond to a written
36 notification of a deficiency in the application within 90 days of the
37 date of the notification.

38 (c) The commissioner shall, within 60 days from the filing of
39 a full and complete application for a license with the fees, either
40 issue a license or file a statement of issues prepared in accordance

with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 16. Section 22705.1 is added to the Financial Code, to read:

22705.1. (a) For any licensee, a disciplinary action taken by the State of California, another state, an agency of the federal government, or another country for an action substantially related to the activity regulated under this division may be grounds for disciplinary action by the commissioner. A certified copy of the record of the disciplinary action taken against the licensee by the State of California, other state, agency of the federal government, or other country shall be conclusive evidence of the events related therein.

(b) Nothing in this section shall preclude the commissioner from applying a specific statutory provision in this division providing for discipline against a licensee as a result of disciplinary action taken against a licensee by the State of California, another state, an agency of the federal government, or another country.

SEC. 17. Section 23001 of the Financial Code is amended to read:

23001. As used in this division, the following terms have the following meanings:

(a) "Deferred deposit transaction" means a transaction whereby a person defers depositing a customer's personal check until a specific date, pursuant to a written agreement, as provided in Section 23035.

(b) "Commissioner" means the Commissioner of Corporations.

(c) "Department" means the Department of Corporations.

(d) "Licensee" means any person who offers, originates, or makes a deferred deposit transaction, who arranges a deferred deposit transaction for a deferred deposit originator, who acts as an agent for a deferred deposit originator, or who assists a deferred deposit originator in the origination of a deferred deposit transaction. However, "licensee" does not include a state or federally chartered bank, thrift, savings association, ~~or~~ industrial loan company, or credit union. "Licensee" also does not include a retail seller engaged primarily in the business of selling consumer goods, including consumables, to retail buyers that

1 cashes checks or issues money orders for a minimum fee not
2 exceeding two dollars (\$2) as a service to its customers that is
3 incidental to its main purpose or business. “Licensee” also does
4 not include an employee regularly employed by a licensee at the
5 licensee’s place of business. An employee, when acting under the
6 scope of the employee’s employment, shall be exempt from any
7 other law from which the employee’s employer is exempt.

8 (e) “Person” means an individual, a corporation, a partnership,
9 a limited liability company, a joint venture, an association, a joint
10 stock company, a trust, an unincorporated organization, a
11 government entity, or a political subdivision of a government
12 entity.

13 (f) “Deferred deposit originator” means a person who offers,
14 originates, or makes a deferred deposit transaction.

15 *SEC. 18. No reimbursement is required by this act pursuant*
16 *to Section 6 of Article XIII B of the California Constitution*
17 *because the only costs that may be incurred by a local agency or*
18 *school district will be incurred because this act creates a new crime*
19 *or infraction, eliminates a crime or infraction, or changes the*
20 *penalty for a crime or infraction, within the meaning of Section*
21 *17556 of the Government Code, or changes the definition of a*
22 *crime within the meaning of Section 6 of Article XIII B of the*
23 *California Constitution.*

24 ~~to read:~~

25 ~~17642. When the commissioner determines to liquidate a~~
26 ~~licensee, the commissioner shall cause an inventory of all the~~
27 ~~assets of the licensee to be made in duplicate, file the original with~~
28 ~~the court, and file the duplicate in his or her office.~~